THE STATE OF NEW HAMPSHIRE

BELKNAP, SS. **SUPERIOR COURT**

Donald and Carol Latour

v.

City of Laconia

No. 01-E-191

ORDER

The petitioners, Donald and Carol Latour, appeal year 2000 tax assessments by the respondent, City of Laconia (the "City"). Specifically, the petitioners claim that the City acted unlawfully and unreasonably when it classified certain trailers located on their property as buildings. *See* RSA 76:17. The New Hampshire Campground Owners' Association ("NHCA") filed an "Offer of Proof" as *amicus curiae*. The parties stipulated to the facts and the court heard argument based on those facts on September 27, 2002. All parties and the NHCA appeared. Because the court is satisfied that assessing the petitioner's trailers as buildings is lawful and reasonable under the stipulated facts, the interests of justice would not be served by an abatement. RSA 76:17. Accordingly, the assessment by the respondent is AFFIRMED.

Stipulated Facts

The petitioners own real property in Laconia, known as the Hack-Ma-Tack Campground (the "campground"). The petitioners rent campsites on a nightly, monthly and seasonal basis to people who bring trailers onto the sites. Since 1998, the respondent has requested that the petitioners provide it with the names of the owners of trailers of less than 320 square feet who rent campsites on a seasonal basis. This information was requested so that the respondent could determine whether to tax the trailers as real estate under RSA 72:7. The petitioners have refused to

provide the information because they are concerned that such taxation will result in a loss of business. In the 2000 tax year, the respondent assessed taxes against the petitioners for fifteen trailers. The petitioners timely applied for an abatement of taxes on fourteen of the trailers, arguing that they were not taxable. The respondent's board of assessors, relying on *Appeal of the Town of Pelham*, 143 N.H. 536 (1999), denied the abatement. The board found that the trailers were taxable as buildings.

Seasonal lessees pay $2000.00 rent for the season (defined as May 1st to Columbus Day), which includes winter storage of the trailer on the leased lot. The seasonal renter renews the lease agreement in the fall for the following season. The petitioners provide all utilities to those campers who rent by the night. The seasonal renter is responsible for hookup, disconnect and payment of their individual electricity, cable and telephone with each appropriate utility company. The petitioners do not require seasonal renters to disconnect their utilities during the off-season. Water and sewer is included with the seasonal rent; the petitioners disconnect the main water line during the off-season. The seasonal renter is required to remove the roof from any screened platforms/porches for the off-season and is responsible for removing snow from the roof of the trailer if, in the trailer owner's opinion, it is necessary. The seasonal renters are not allowed to stay in their trailers during the off-season. The petitioners do not keep records as to whether any of the trailers are removed for a period of time during the season.

Seasonal renters may make improvements to their sites, such as adding decks, platforms, sheds, porches, screened houses, walkways, and plantings, to include shrubs and trees. Any decks, platforms, sheds and porches, must be removed when the camper no longer renews the seasonal lease, unless the camper makes arrangements for another seasonal camper to take them. Any walkways, plantings or other changes to the landscape must remain when the camper no

longer renews a seasonal lease. The seasonal camper is responsible for the upkeep of the site, including mowing and raking.

Of the fourteen trailers that were the original subjects of this appeal, six are no longer located at the campground. The City agrees that it will abate the taxes on these six trailers. The remaining eight trailers are the subjects of this appeal. None of these remaining eight trailers were registered to travel on the road in the 2000 tax year; however, it is undisputed that each trailer still has wheels and tires attached. Each of these trailers is described below by reference to the lot on which each trailer is located:

- Lot 8—Has been on this campsite since 1997. In addition to 200 square feet of living area, this trailer has a 200 square foot wooden screened deck with an awning extending from the trailer over the deck area. A photograph of this trailer on the respondent's tax card shows two planters adjacent to the deck and also reveals large blocks underneath the front corner of the trailer.

- Lot 9—Has been on this campsite since 1999. In addition to 208 square feet of living area, this trailer has a 176 square foot wooden screened deck with a railing and an awning extending from the trailer over the deck area. In addition, a 48 square foot metal shed has been erected behind the trailer. A photograph of this trailer on the respondent's tax card shows extensive shrubbery planted around the deck area and latticework around the base of the trailer.

- Lot 12—Has been on this campsite since 1988. In addition to 232 square feet of living area, this trailer has a 160 square foot wooden screened deck with an awning extending from the trailer over the deck area. In addition, a 54 square foot metal shed has been erected behind the trailer. A photograph of this trailer on the respondent's tax card shows a stone walkway leading up to the screened deck, a large stone planter and a large lattice fence around one end of the trailer.

- Lot 14—Has been on this campsite since 1990. In addition to 269 square feet of living area, this trailer has a 256 square foot wooden deck with an awning extending from the trailer over the deck area. In addition, a 100 square foot metal shed has been erected on this campsite. A photograph of this trailer on the respondent's tax card shows extensive shrubbery planted around the deck area and a stone walkway leading up to the deck area.

- Lot 15—Has been on this campsite since 1999. In addition to 232 square feet of living area, this trailer has a 160 square foot wooden screened deck with an awning extending from the trailer over the deck area. In addition, a 40 square foot metal shed has been erected on this campsite. A photograph of this trailer on the respondent's tax card shows

several planters placed around the deck area and a stockade style fence erected around one end of the trailer.

- Lot 16—Has been on this campsite since 1986. In addition to 248 square feet of living area, this trailer has a 168 square foot wooden deck covered with a tent-like screen extending from the trailer. In addition, an 80 square foot wood-frame shed has been erected on this campsite. A photograph of this trailer on the respondent's tax card shows a perennial garden planted at one end of the trailer, planters and a stone walkway leading up to the deck area.

- Lot 20—Has been on this campsite since 1990. In addition to 232 square feet of living area, this trailer has a 220 square foot wooden screened deck with an awning extending from the trailer over the deck area. A photograph of this trailer on the respondent's tax card shows shrubbery and small trees planted around this trailer.

- Lot 32—Has been on this campsite since 1998. In addition to 263 square feet of living area, this trailer has a 160 square foot wooden deck covered with a tent-like screen extending from the trailer. A photograph of this trailer on the respondent's tax card does not reveal any landscaping around the trailer, but does show that the front of the trailer is on blocks.

Analysis

The test for abatement is not whether the assessed value of the subject property exceeds fair market value; rather, the test is whether the taxpayer is paying more than his proportional share of taxes. *Stevens v. City of Lebanon*, 122 N.H. 29, 32 (1982). The petitioner has the burden of proving the disproportion by a preponderance of the evidence. *Id*. By seeking an abatement, the petitioner has assumed this burden. "All real estate, whether improved or unimproved, shall be taxed except where otherwise provided." RSA 72:7.

The parties agree that the trailers are not manufactured housing or fixtures, and that the sole issue in this case is whether the trailers are taxable as buildings under RSA 72:7. The parties also agree that *Pelham* is the governing authority. In that case, the court rejected a claim that certain truck trailers could not as a matter of law be taxed as "buildings." *Pelham*, 143 N.H. at 539. Two of the *Pelham* truck trailers had been removed from their chassis or wheels and set on railroad ties. *Id*., at 537. One had been on the property since 1978 (a period of approximately fifteen

years based on the 1993 tax year at issue in *Pelham*) and four others were on wheels but not registered. *Id*. The court held that the determination of whether or not the trailers are "buildings" should be based on the specific circumstances of the case, after consideration of four factors:

> A trailer is taxable as a building if by its use it: (1) is intended to be more or less permanent, not a temporary structure; (2) is more or less completely enclosed; (3) is used as a dwelling, storehouse, or shelter; and (4) is intended to remain stationary.

Pelham, 143 N.H. at 539 (citation omitted).

The petitioners and the *amicus curiae* argue that the trailers are not taxable as buildings because they are intended to be temporary and used for the summer season only. They claim that the owner's intent to use the trailers as temporary structures is manifested by the maintenance of those trailers on their axles with inflated tires. The petitioners also attempt to distinguish this case from *Pelham* by virtue of the fact that they do not use the trailers; rather, campsite seasonal renters own and use the trailers. The NHCA also emphasizes that a trailer's location on any given campsite must be temporary because it can be moved in a matter of "minutes."[1] The respondent objects, arguing that the stipulated facts clearly support a finding that the trailer owners' intent is to treat the trailers as stationary structures; *i.e.*, buildings. The respondent concedes that a trailer parked at the petitioners' campground for one season is not a building, but contends that a trailer maintained on the petitioners' property for successive seasons manifests the owner's intent to remain at the site, thus rendering it taxable as a building. The court agrees with the respondent.

First, the petitioners cannot rely on the ownership and use of the trailers by their lessees, rather than by themselves personally, as a means of distinguishing this case from *Pelham*. As

[1] Some of the trailers have rested on their tires for many years. For example, the Lot 16 trailer has not been moved since 1988—a period of fourteen years. The record contains no evidence and court will not speculate as to whether fourteen year-old tires used in such a manner would have an impact on the lessee's ability to move the trailer in a matter of "minutes."

discussed above, the petitioners refused to provide the respondent with the owners' names for each of the eight trailers at issue. Because of this, the respondent assessed each trailer and issued the tax bill to the petitioners directly. The petitioners' effort to avoid the tax on this basis is untenable. The petitioners could avoid a tax by revealing the names of the owners to the respondent.

Second, the trailers at issue here are buildings as the term is used in RSA 72:7. They are more or less completely enclosed and used as a dwelling or for shelter. Notwithstanding the position of the petitioners and the NHCA, the court also finds that the trailers at issue here are intended to remain stationary and to be more or less permanent.

The rules and regulations established by the petitioners for seasonal campsite rentals provide that trailers may be left on a given campsite year after year. Indeed, the rental paid by seasonal campers includes the right to keep the trailer on the campsite over the winter. Yearly rental does not include electricity, cable or telephone—the trailer owner must arrange for these connections and, once established, the trailer owner may maintain these connections through the rental of the campsite. Trailer owners are also responsible for the maintenance of both the trailer and the campsite rented throughout the year. Moreover, trailer owners are authorized to improve the campsites. The owners may add decks, sheds and landscaping and they have taken full advantage of this ability. While it is true that sheds and decks must be removed if the trailer owner gives up the campsite, owners may leave them in place if the next trailer owner to use the site will take them. Regardless, trailer owners cannot remove any landscaping such as plantings and walkways. These features are considered permanent improvements.

In the case of the eight trailers at issue in this case, each has been left on its respective campsite for a number of years. None of them is registered. *See* RSA 261:40 (generally requiring

owners to register all vehicles if they are to be taken on the ways of this state); *see also* RSA 259:84-a (defining "recreation vehicle" as a vehicle, whether towed or motorized). Each has an elaborate covered wooden deck built next to the trailer, with all but one screened in. Five of the owners have built storage sheds on the campsite. Several of the trailers have fencing and/or latticework. All but two of the trailers have substantial landscaping.

All of these circumstances manifest an intent on the part of each individual trailer owner to remain stationary. Trailer owners who intend to move their trailer each year are not likely to connect or disconnect various utilities, nor are they likely to be willing to go to the time and expense of erecting decks and/or sheds on campsites, only to have to remove them after a season is over. Similarly, an owner intending to move at the end of a season is not likely to install permanent improvements, such as walkways and other landscaping. Finally, a failure to register a trailer indicates that the owner does not intend to take it on the road. These trailers are more akin to a summer camp dwelling than to a camper intended for travel. A summer camp dwelling is a building.

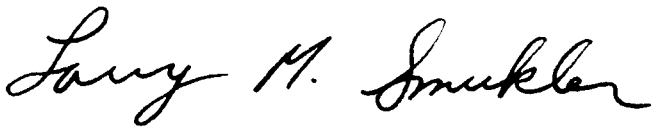
Conclusion

Although trailers are more easily moved than a structure built on a foundation, they may still be a "building" within the meaning of RSA 72:7 if the facts so indicate, after consideration of the *Pelham* factors. *See Pelham*, 143 N.H. at 538-39. After consideration of the stipulated facts in light of the *Pelham* factors, the court finds and concludes that the eight trailers at issue here are buildings as defined by the statute. The trailers are intended to be more or less permanent. They are not temporary structures. They are more or less completely enclosed. They are being used as a dwelling or shelter. They are intended to remain stationary. Accordingly, the petitioners have failed to sustain their burden of showing that the respondent's determination to tax

the trailers as RSA 72:7 "buildings" was either unlawful or unreasonable. "[J]ustice requires" that the City's assessment be AFFIRMED. RSA 76:17.

The petitioners' requested findings of fact and rulings of law are granted or denied consistent with the above order. *See Clinical Lab Products, Inc. v. Martina*, 121 N.H. 989, 991 (1981); *R.J. Berke & Co. v. J.P. Griffin, Inc.*, 116 N.H. 760, 766-67 (1976). Any of the petitioners' requests for findings and rulings not granted herein either expressly or by necessary implication are hereby denied or determined to be unnecessary in light of the court's decision.

So ORDERED.



Date: November 25, 2002

LARRY M. SMUKLER
PRESIDING JUSTICE